



Paper No. 17

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APR 02 2002

OFFICE OF PETITIONS

In re Application of  
Rajopadhye, et al.  
Application No. 09/599,890  
Filed: June 21, 2000  
Attorney Docket No. DM-6999-A

DECISION ON PETITION

This is a decision on the petition filed on February 8, 2002, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136 (a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action, mailed April 4, 2001, which set a shortened statutory period for reply of one (1) month. On September 7, 2001, petitioner filed a Continued Prosecution Application (CPA). However, petitioner did not obtain an extension of time, so the CPA could not be entered. Regardless, petitioner was mailed a Notice of Improper CPA on September 27, 2001. CPA practice is only available for applications filed before May 29, 2000. Moreover, the CPA could not be treated as an RCE because prosecution in the application had not yet closed. Petitioner obtained the necessary five (5) month extension of time on October 1, 2001 to maintain pendency of the application for purposes of the CPA. However, as explained above, the application is not eligible for CPA practice, nor could the CPA be treated as a constructive RCE. Accordingly, the above-identified application became abandoned on October 5, 2001. A Notice of Abandonment was mailed on October 17, 2001.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1), the required reply.

With the instant petition, petitioner has submitted a CPA. The above-identified application, being filed after May 29, 2000, is not eligible for CPA practice. Moreover, because an RCE can only be filed once prosecution in the application is closed, the CPA can not be treated as a constructive RCE.

<sup>1</sup> See 37 CFR 1.53(d) (1) (I) (A).

In order for the application to be revived, petitioner must submit a required reply within the meaning of 37 CFR 1.137(b)(1). **Any renewed petition should be accompanied by a proper reply in the form of an Amendment (Election) in response to the non-final Office action (a Restriction Requirement) mailed April 4, 2001, or a continuing application under 37 CFR 1.53(b), not a CPA under 37 CFR 1.53(d).** If petitioner fails to reply in this manner, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application.

With the instant petition, petitioner has submitted a Terminal Disclaimer. As the above-identified application was not filed before June 8, 1995, no Terminal Disclaimer is required to revive the abandoned application.<sup>2</sup> Accordingly, the Terminal Disclaimer has not been entered and the \$110 Terminal Disclaimer fee has been refunded to petitioner's Deposit Account No. 02-3850.

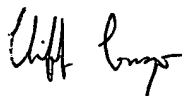
Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1,960 extension of time fee submitted with the petition on February 8, 2002 was subsequent to the maximum period obtainable for reply (October 4, 2001), this fee has been refunded to petitioner's Deposit Account No. 02-3850.

Furthermore, since the CPA filed on September 7, 2001 was not a proper reply, the CPA fee at that time of \$710, plus the \$468 submitted for claims in excess of twenty, has been refunded to petitioner's Deposit Account 02-3850. Likewise, the fee of \$740 for the CPA submitted with the instant petition (plus the \$468 for claims in excess of twenty) has been refunded to petitioner's deposit account.

In total, \$4456 has been refunded to Deposit Account No. 02-3850.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (703)305-0272.



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for Patent Examination Policy

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<sup>2</sup> See 37 CFR 1.137(d).